

TRAINING MODULE 11

STUDY PLAN

Disability Pension

Objective:

To learn how to assist a claimant submit a claim for nonservice-connected disability pension, and to become familiar with the requirements for such claims.

References:

Title 38 U.S. Code, Chapter 15.

38 Code of Federal Regulations, Parts 3 and 4.

Adjudication Manual M21-1, Part I, Appendix B; Part IV.

Adjudication Manual M21-1MR (Manual Rewrite), Part 5

VA Pamphlet 80-06-01, *Federal Benefits for Veterans and Dependents*.

Instructions:

Study the assigned reference materials to learn the requirements for disability pension claims. Pay special attention to the income and net worth information in the application, as that will be a major portion of the development of the claim.

Summary:

DISABILITY PENSION IS AN INCOME SUPPLEMENT PROGRAM FOR LOW-INCOME DISABLED veterans and their families. There are three basic requirements: wartime service, income and net worth within specified limits, and permanent disability sufficient to preclude substantially gainful employment.

VA currently maintains three disability pension programs:

“Old-law pension,” also known as “protected pension;”

“Section 306 pension,” also known as “86-211 pension;” and

“Improved pension,” which is the current pension program.

Improved pension began January 1, 1979. All persons who were in receipt of pension under either of the prior pension laws, or who had a pension claim pending on December 31, 1978, are protected under those laws for as long as they continue to meet the income and net worth limits

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of their program. If the pension award is terminated for any reason, such as loss of a dependent, the veteran may only reopen the claim under the current (improved) pension program. In addition, since the veteran's status is in effect frozen, a veteran may not claim additional pension because of being housebound or being in need of regular aid and attendance unless he or she elects improved pension. The balance of this module pertains to the current (improved) pension program.

Application for pension is made by completing and submitting VA Form 21-526, *Veteran's Application for Compensation or Pension*. Part A (**General Information**); Part C (**Dependency**); and Part D (**Pension**) must always be completed; Part B (**Compensation**) need not be completed unless the veteran is also claiming service connection for one or more disabilities. (See sample application in Training Module 4, pages 4-9 through 4-22.) VA Form 21-526 is required for *original* claims for either or both service connection and/or pension; for *reopened* pension claims only, VA Form 21-527, *Income—Net Worth and Employment Statement (In Support of Claim for Total Disability Benefits)*, may be used instead.

Qualifying wartime service for pension purposes means that the veteran served on active duty for at least 90 consecutive days, at least one day of which was during a wartime period; or if less than 90 days, was discharged because of disability for which service connection could be established without resort to any presumptive provisions of the law; or had a disability for which service connection could be established which would have warranted a discharge for disability; or had two or more separate periods of active service for an aggregate of 90 days or more during more than one period of war. For those veterans whose wartime service was Gulf War Era (beginning August 2, 1990), minimum active service requirements (24 consecutive months or the full period for which called to active duty, whichever is less) also apply: the veteran must meet either the minimum active service requirement or the general qualifying service requirement above, whichever is the greater.

Income and net worth limits for improved pension are spelled out in 38 USC 1521 and 1522. The income limits are adjusted periodically. The adjusted limits are published in the "Notices" section of the *Federal Register*, and are listed in Adjudication Manual M21-1, Part I, Appendix B. All of the veteran's family income from all sources is counted, unless specifically excluded. Specific categories of countable income are discussed in 38 CFR § 3.271. Categories of excluded and/or excludable income are listed in 38 CFR § 3.272. In addition, an extensive (but not comprehensive) listing of specific sources of countable and non-countable income is contained in M21-1, Part IV, Chapter 16, **Income and Net Worth**, Subchapter IX, **Improved Pension—Counting Specific Types of Income**. Medical and certain other expenses, paid by the veteran and/or family and not reimbursed from any source, may be *deducted* from otherwise countable income to reduce the levels used for determining pension rates payable. See Module 8, Section 2, **Deductible Expenses**, for more information.

Higher income limits apply if the veteran has dependents; however, the dependents' incomes are then also counted, as well. In addition, higher income limits also apply if the veteran is housebound or in need of regular aid and attendance. Finally, if the veteran served during the Mexican Border Period or during World War I, the income limit is further raised in addition to any other consideration.

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Pension is not payable if the veteran's and/or the family's net worth is of such size that it would be reasonable for the net worth to be consumed for the maintenance of the veteran and family. This is determined on a case-by-case basis, taking into account such factors as the nature, source(s), and amount(s) of income and assets; the nature and amount(s) of debts and expenses; the number and age(s) of any dependents; the amount of anticipated educational expenses for dependents; the veteran's and dependents' state of health; and the anticipated life expectancy of the veteran and/or the dependents. In general, net worth is not a factor for consideration unless it is greater than \$80,000.

To determine the actual pension rate(s) payable, the veteran's total annual countable family income (after exclusions and deductions) is subtracted from the applicable income limit and the difference divided into twelve equal payments. If the total annual amount payable would be less than 4% of the maximum annual rate, payments may be made quarterly, semi-annually, or even annually (depending on the amount payable), unless the veteran specifically requests a monthly payment.

The final requirement is that the veteran be permanently totally disabled (PT). A veteran who is age 65 or older is presumed to be PT for pension purposes, without the need for a rating to determine disability. In addition, a veteran under age 65 who has been found permanently totally disabled by the Social Security Administration for any of their benefit programs, or who is a patient in a nursing home for long-term care because of disability, is also presumed to be PT without the need for a rating.

In all other cases, a rating determination of PT disability is required. All of the veteran's disabilities, both service-connected and nonservice-connected, may be considered. The only requirements are that the disability is permanent, that it is not the result of the veteran's own willful misconduct, and that it is sufficient to preclude substantially gainful employment for which the veteran would otherwise qualify, based on his or her age, education, and work history.

The disabilities are evaluated according to the criteria set out in the *Schedule for Rating Disabilities*. If the veteran's disabilities are less than 100% disabling, the percentage requirements set out in 38 CFR § 4.16 for total disability based on individual unemployability apply in pension claims, also.

Marginal employment does not preclude a finding of permanent total disability, so long as disability is the reason the veteran is unable to procure better employment. Marginal employment for pension purposes is defined as working less than half the usual number of hours or being paid less than half the prevailing wage for the particular work performed. [38 CFR § 4.17(a)] If a veteran does not meet the percentage requirements but is shown to be unemployable because of the combination of disability and other factors, the case is to be referred to the Service Center Manager for consideration of possible extraschedular entitlement.

Higher maximum annual pension rates apply if the veteran is so severely disabled as to be house-bound or in need of regular aid and attendance. Entitlement to special monthly pension (SMP) may be determined on a factual basis, or it may be based on certain presumptions spelled out in 38 CFR § 3.351. A veteran will be presumed to be in need of regular aid and attendance if he or she is a patient (not simply a resident) in a nursing home because of disability, or if he or she is

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blind, with best vision in both eyes 5/200 or worse, or concentric contraction of visual fields to 5° or less bilaterally. All other cases will require a factual finding (rating decision). If a veteran with multiple disabilities has one single condition which is ratable at 100% under the *Schedule for Rating Disabilities* plus other independently ratable conditions which combine to 60% or more, special monthly pension at the housebound rate is payable.

There are special provisions when two wartime-era veterans married to each other are both PT disabled for pension purposes. Rather than each spouse being paid separately with the other spouse listed as a dependent, both spouses are paid on a single unified award, with the maximum annual pension rate appropriate for a veteran with that number of dependents. If both veterans are housebound or in need of aid and attendance, or both veterans served during World War I or the Mexican Border Period, the maximum annual pension rate is increased by twice the amount indicated for a similarly circumstanced veteran whose spouse was not a veteran.

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Study Questions:

Using the assigned references and reading materials, answer the following questions:

1. Veteran and spouse have income from the following sources. The spouse is also a veteran, and is receiving compensation for a SC hysterectomy. Indicate which income is not countable for improved pension purposes:
 - a. Social Security
 - b. County payments for acting as foster parents
 - c. Rental income
 - d. VA compensation
2. Veteran had traumatic amputation of both feet in an industrial accident. He returned to work and continued until reaching normal retirement for longevity.
 - a. Can he be rated PT for pension purposes? (Y/N)
 - b. Why?
3. Veteran was inducted into service in early 1945. Six weeks after starting basic training, he was found to have a small duodenal ulcer. This disqualified him for overseas duty, so he was discharged after being on active duty for two months and ten days. SC was established for the ulcer, but it was never symptomatic and was always rated 0% disabling. Does he meet service requirements for VA pension? (Y/N)
4. While driving under the influence of alcohol, Gulf War veteran hit a freeway overpass abutment. He suffered massive head and neck injuries, and is now quadriplegic and demented.
 - a. Can he be rated PT for pension purposes? (Y/N)
 - b. Why?
5. A blind veteran, with no light perception in either eye, is considered to be in need of regular aid and attendance. (T/F)
6. Additional pension for aid and attendance based on blindness will be reduced when the veteran is admitted to a VA medical facility. (T/F)

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7. Veteran's spouse inherited \$100,000 from a deceased relative. This makes the veteran's family income over the limit for VA pension for the twelve months following receipt. What effect does it have on future entitlement to pension?
8. Is the home in which the veteran and his or her spouse reside considered as part of the corpus of their estate for improved pension purposes? (Y/N)
9. Elderly veteran did not complete grade school, and does only menial, unskilled jobs on an occasional basis. He works on average two or three days each month, and survives by the kindness of friends. He is in good health, and has no ratable disabilities. Can he be rated as PT for pension purposes? (Y/N)
10. How can a veteran who is receiving Section 306 pension claim additional pension for aid and attendance?
11. The veteran served from February 15, 1998 to June 30, 1998. He was administratively discharged under honorable conditions because of inadaptability. Does he meet service requirements for disability pension? (Y/N)